

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GODFREY S. DRAKE and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Jackson, MS

*Docket No. 02-1282; Submitted on the Record;
Issued October 8, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has greater than a 10 percent permanent impairment of his left upper extremity, for which he has received a schedule award.

The Office of Workers' Compensation Programs accepted that on September 25, 2000 appellant, then a 49-year-old computer specialist, slipped and fell at work, sustaining a fracture of his left wrist. Appellant underwent a surgical closed reduction with external fixator placement across the wrist on September 26, 2000. He stopped work following the surgery and received appropriate compensation benefits; thereafter he returned to regular duty on November 7, 2000.

Appellant filed a claim for a schedule award for permanent impairment of his left wrist. He complained of tremendous pain especially with typing.

Appellant's physician, Dr. Wallace W. Weatherly, an orthopedic surgeon, found in an August 6, 2001 office evaluation that the date of appellant's maximum medical improvement was August 6, 2001 and he determined that appellant had 20 degrees of loss of flexion and 20 degrees loss of extension, and pain and weakness, which affected his duty performance. Dr. Weatherly opined that appellant had a 10 percent permanent impairment of his left hand. A functional capacity evaluation was performed for Dr. Weatherly on August 27 and 29, 2001 which detailed appellant's muscle testing results and pain complaints. He reviewed the testing results and opined that there was no change in his previously articulated impairment rating.

On December 6, 2001 an Office medical adviser reviewed Dr. Weatherly's examination and testing results and opined that appellant had a 10 percent permanent impairment of his left upper extremity, according to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. The Office medical adviser found that appellant had a 10 percent permanent impairment due to 20 degrees of loss of flexion and 20 degrees loss of extension, which equaled a 7 percent impairment and pain and weakness, which equaled a 3 percent impairment. When combined, these impairment percentages equaled a 10 percent permanent impairment.

By decision dated December 18, 2001, the Office granted appellant a schedule award for a 10 percent permanent impairment of his left upper extremity for the period August 6, 2001 to March 12, 2002 for a total of 31.2 weeks of compensation.

The Board finds that appellant has no greater than a 10 percent permanent impairment of his left upper extremity, for which he has received a schedule award.

A claimant seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.² Section 8107 provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.³

The Act⁴ provides compensation for both disability and physical impairment. "Disability" means the incapacity of an employee, because of an employment injury, to earn the wages the employee was receiving at the time of injury.⁵ In such cases, the Act compensates an employee for loss of wage-earning capacity. In cases of physical impairment, the Act compensates an employee, pursuant to a compensation schedule, for the permanent loss of use of certain specified members of the body, regardless of the employee's ability to earn wages.⁶

The schedule award provisions of the Act⁷ and its implementing regulation⁸ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. The Act does not, however, specify the manner in which the percentage loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.⁹ The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

¹ 5 U.S.C. §§ 8101-8193.

² *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

³ 5 U.S.C. § 8107(a). It is thus the claimant's burden of establishing that he sustained a permanent impairment of a scheduled member or function as a result of his employment injury. See *Raymond E. Gwynn*, 35 ECAB 247 (1983) (addressing schedule awards for members of the body that sustained an employment-related permanent impairment). *Philip N.G. Barr*, 33 ECAB 948 (1982) (indicating that the Act provides that a schedule award be payable for a permanent impairment resulting from an employment injury).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17).

⁶ See *Yolanda Librera (Michael Librera)*, 37 ECAB 388 (1986).

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404(1999).

⁹ *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

The A.M.A., *Guides* standards for evaluating the impairment of extremities are based primarily on loss of range of motion.¹⁰ However, all factors that prevent a limb from functioning normally, including pain or discomfort, should be considered, together with loss of motion, in evaluating the degree of permanent impairment.¹¹ The A.M.A., *Guides* provides a grading scheme for determining the impairment rating of an upper extremity based on functional use.¹²

In his August 6, 2001 report, after extensive range of motion testing, Dr. Weatherly described in detail appellant's limitations in range of left upper extremity motion and noted his restrictions due to tenderness and pain. He opined that appellant had reached maximum medical improvement that date and had a 10 percent permanent impairment of his left hand.

As Dr. Weatherly's report contained a complete and detailed description of appellant's ranges of left upper extremity motion, and the limitations due to pain and discomfort that appellant reported on examination, the Office properly referred this report to the Office medical adviser, for a computation of impairment using the standards found in the A.M.A., *Guides*.¹³ The Office medical adviser reviewed Dr. Weatherly's report, properly applied the grading scheme and procedure found in the A.M.A., *Guides* for determining the impairment of an upper extremity and indicated that appellant had a 7 percent permanent impairment of the left upper extremity due to loss of range of motion and a 3 percent permanent impairment due to pain and discomfort, which was combined to result in a 10 percent permanent impairment of his left upper extremity.

As there is no other probative medical evidence in the case record to support any greater permanent impairment, appellant has not established that he is entitled to greater than a 10 percent permanent impairment of the left upper extremity, according to standards applicable to all claimants. Therefore he has not established his claim.

¹⁰ See *William F. Simmons*, 31 ECAB 1448 (1980); *Richard A. Ehrlich*, 20 ECAB 246, 249 (1969) and cases cited therein.

¹¹ See *Paul A. Toms*, 28 ECAB 403 (1987).

¹² A.M.A., *Guides*, (fifth edition 2001), Table 13-16, p. 338.

¹³ See *James E. Jenkins*, 39 ECAB 860 (1988).

Accordingly, the decision of the Office of Workers' Compensation Programs dated December 18, 2001 is hereby affirmed.

Dated, Washington, DC
October 8, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member